

[Passed Both Houses]

ASSEMBLY, No. 2957

STATE OF NEW JERSEY

INTRODUCED MAY 12, 1997

By Assemblymen BLEE, AZZOLINA, Gibson, LeFevre, Geist, Cottrell, Kelly, Talarico, T. Smith, Asselta, Corodemus, Arnone, Malone, DeSopo, Assemblywoman Heck, Assemblymen Wolfe, Holzapfel, Assemblywoman Crecco, Assemblymen Zecker, Bateman, O'Toole, Bucco and Senator Matheussen

1 AN ACT concerning controlled dangerous substances and amending
2 N.J.S.2C:35-2, N.J.S.2C:35-4 and N.J.S.2C:35-5.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.2C:35-2 is amended to read as follows:
8 2C:35-2. Definitions.

9 As used in this chapter:

10 "Administer" means the direct application of a controlled dangerous
11 substance or controlled substance analog, whether by injection,
12 inhalation, ingestion, or any other means, to the body of a patient or
13 research subject by: (1) a practitioner (or, in his presence, by his
14 lawfully authorized agent), or (2) the patient or research subject at the
15 lawful direction and in the presence of the practitioner.

16 "Agent" means an authorized person who acts on behalf of or at the
17 direction of a manufacturer, distributor, or dispenser but does not
18 include a common or contract carrier, public warehouseman, or
19 employee thereof.

20 "Controlled dangerous substance" means a drug, substance, or
21 immediate precursor in Schedules I through V. The term shall not
22 include distilled spirits, wine, malt beverages, as those terms are
23 defined or used in R.S.33:1-1 et seq., or tobacco and tobacco
24 products. The term, wherever it appears in any law or administrative
25 regulation of this State, shall include controlled substance analogs.

26 "Controlled substance analog" means a substance that has a

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 chemical structure substantially similar to that of a controlled
2 dangerous substance and that was specifically designed to produce an
3 effect substantially similar to that of a controlled dangerous substance.
4 The term shall not include a substance manufactured or distributed in
5 conformance with the provisions of an approved new drug application
6 or an exemption for investigational use within the meaning of section
7 505 of the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1052 (21
8 U.S.C. s. 355).

9 "Counterfeit substance" means a controlled dangerous substance or
10 controlled substance analog which, or the container or labeling of
11 which, without authorization, bears the trademark, trade name, or
12 other identifying mark, imprint, number or device, or any likeness
13 thereof, of a manufacturer, distributor, or dispenser other than the
14 person or persons who in fact manufactured, distributed or dispensed
15 such substance and which thereby falsely purports or is represented to
16 be the product of, or to have been distributed by, such other
17 manufacturer, distributor, or dispenser.

18 "Deliver" or "delivery" means the actual, constructive, or attempted
19 transfer from one person to another of a controlled dangerous
20 substance or controlled substance analog, whether or not there is an
21 agency relationship.

22 "Dispense" means to deliver a controlled dangerous substance or
23 controlled substance analog to an ultimate user or research subject by
24 or pursuant to the lawful order of a practitioner, including the
25 prescribing, administering, packaging, labeling, or compounding
26 necessary to prepare the substance for that delivery. "Dispenser"
27 means a practitioner who dispenses.

28 "Distribute" means to deliver other than by administering or
29 dispensing a controlled dangerous substance or controlled substance
30 analog. "Distributor" means a person who distributes.

31 "Drugs" means (a) substances recognized in the official United
32 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
33 United States, or official National Formulary, or any supplement to
34 any of them; and (b) substances intended for use in the diagnosis, cure,
35 mitigation, treatment, or prevention of disease in man or other animals;
36 and (c) substances (other than food) intended to affect the structure or
37 any function of the body of man or other animals; and (d) substances
38 intended for use as a component of any article specified in subsections
39 (a), (b) and (c) of this section; but does not include devices or their
40 components, parts or accessories.

41 "Drug dependent person" means a person who is using a controlled
42 dangerous substance or controlled substance analog and who is in a
43 state of psychic or physical dependence, or both, arising from the use
44 of that controlled dangerous substance or controlled substance analog
45 on a continuous basis. Drug dependence is characterized by behavioral
46 and other responses, including but not limited to a strong compulsion

1 to take the substance on a recurring basis in order to experience its
2 psychic effects, or to avoid the discomfort of its absence.

3 "Hashish" means the resin extracted from any part of the plant
4 Genus Cannabis L. and any compound, manufacture, salt, derivative,
5 mixture, or preparation of such resin.

6 "Manufacture" means the production, preparation, propagation,
7 compounding, conversion or processing of a controlled dangerous
8 substance or controlled substance analog, either directly or by
9 extraction from substances of natural origin, or independently by
10 means of chemical synthesis, or by a combination of extraction and
11 chemical synthesis, and includes any packaging or repackaging of the
12 substance or labeling or relabeling of its container, except that this
13 term does not include the preparation or compounding of a controlled
14 dangerous substance or controlled substance analog by an individual
15 for his own use or the preparation, compounding, packaging, or
16 labeling of a controlled dangerous substance: (1) by a practitioner as
17 an incident to his administering or dispensing of a controlled
18 dangerous substance or controlled substance analog in the course of
19 his professional practice, or (2) by a practitioner (or under his
20 supervision) for the purpose of, or as an incident to, research,
21 teaching, or chemical analysis and not for sale.

22 ["Marihuana"] "Marijuana" means all parts of the plant Genus
23 Cannabis L., whether growing or not; the seeds thereof, and every
24 compound, manufacture, salt, derivative, mixture, or preparation of
25 such plant or its seeds, except those containing resin extracted from
26 such plant; but shall not include the mature stalks of such plant, fiber
27 produced from such stalks, oil or cake made from the seeds of such
28 plant, any other compound, manufacture, salt, derivative, mixture, or
29 preparation of such mature stalks, fiber, oil, or cake, or the sterilized
30 seed of such plant which is incapable of germination.

31 "Narcotic drug" means any of the following, whether produced
32 directly or indirectly by extraction from substances of vegetable origin,
33 or independently by means of chemical synthesis, or by a combination
34 of extraction and chemical synthesis:

35 (a) Opium, coca leaves, and opiates;

36 (b) A compound, manufacture, salt, derivative, or preparation of
37 opium, coca leaves, or opiates;

38 (c) A substance (and any compound, manufacture, salt, derivative,
39 or preparation thereof) which is chemically identical with any of the
40 substances referred to in subsections (a) and (b), except that the words
41 "narcotic drug" as used in this act shall not include decocainized coca
42 leaves or extracts of coca leaves, which extracts do not contain
43 cocaine or ecogine.

44 "Opiate" means any dangerous substance having an
45 addiction-forming or addiction-sustaining liability similar to morphine
46 or being capable of conversion into a drug having such

1 addiction-forming or addiction-sustaining liability. It does not include,
2 unless specifically designated as controlled pursuant to the provisions
3 of section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer
4 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
5 It does include its racemic and levorotatory forms.

6 "Opium poppy" means the plant of the species *Papaver somniferum*
7 L., except the seeds thereof.

8 "Person" means any corporation, association, partnership, trust,
9 other institution or entity or one or more individuals.

10 "Plant" means an organism having leaves and a readily observable
11 root formation, including, but not limited to, a cutting having roots, a
12 rootball or root hairs.

13 "Poppy straw" means all parts, except the seeds, of the opium
14 poppy, after mowing.

15 "Practitioner" means a physician, dentist, veterinarian, scientific
16 investigator, laboratory, pharmacy, hospital or other person licensed,
17 registered, or otherwise permitted to distribute, dispense, conduct
18 research with respect to, or administer a controlled dangerous
19 substance or controlled substance analog in the course of professional
20 practice or research in this State.

21 (a) "Physician" means a physician authorized by law to practice
22 medicine in this or any other state and any other person authorized by
23 law to treat sick and injured human beings in this or any other state
24 and

25 (b) "Veterinarian" means a veterinarian authorized by law to
26 practice veterinary medicine in this State.

27 (c) "Dentist" means a dentist authorized by law to practice
28 dentistry in this State.

29 (d) "Hospital" means any federal institution, or any institution for
30 the care and treatment of the sick and injured, operated or approved
31 by the appropriate State department as proper to be entrusted with the
32 custody and professional use of controlled dangerous substances or
33 controlled substance analogs.

34 (e) "Laboratory" means a laboratory to be entrusted with the
35 custody of narcotic drugs and the use of controlled dangerous
36 substances or controlled substance analogs for scientific, experimental
37 and medical purposes and for purposes of instruction approved by the
38 State Department of Health.

39 "Production" includes the manufacture, planting, cultivation,
40 growing, or harvesting of a controlled dangerous substance or
41 controlled substance analog.

42 "Immediate precursor" means a substance which the State
43 Department of Health has found to be and by regulation designates as
44 being the principal compound commonly used or produced primarily
45 for use, and which is an immediate chemical intermediary used or
46 likely to be used in the manufacture of a controlled dangerous

1 substance or controlled substance analog, the control of which is
2 necessary to prevent, curtail, or limit such manufacture.

3 "Residential treatment facility" means any facility approved by any
4 county probation department for the inpatient treatment and
5 rehabilitation of drug dependent persons.

6 "Schedules I, II, III, IV, and V" are the schedules set forth in
7 sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8)
8 and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified by any
9 regulations issued by the Commissioner of Health pursuant to his
10 authority as provided in section 3 of P.L.1970, c.226 (C.24:21-3).

11 "State" means the State of New Jersey.

12 "Ultimate user" means a person who lawfully possesses a controlled
13 dangerous substance or controlled substance analog for his own use
14 or for the use of a member of his household or for administration to an
15 animal owned by him or by a member of his household.

16 (cf: P.L.1987, c.106, s.1)

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18 2. N.J.S.2C:35-4 is amended to read as follows:

19 2C:35-4. Maintaining or Operating a Controlled Dangerous
20 Substance Production Facility.

21 Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), any
22 person who knowingly maintains or operates any premises, place or
23 facility used for the manufacture of methamphetamine, lysergic acid
24 diethylamide, phencyclidine, marijuana in an amount greater than five
25 pounds or ten plants or any substance [classified as a narcotic drug]
26 listed in Schedule I or II, or the analog of any such substance, or any
27 person who knowingly aids, promotes, finances or otherwise
28 participates in the maintenance or operations of such premises, place
29 or facility, is guilty of a crime of the first degree and shall, except as
30 provided in N.J.S.2C:35-12, be sentenced to a term of imprisonment
31 which shall include the imposition of a minimum term which shall be
32 fixed at, or between, one-third and one-half of the sentence imposed,
33 during which the defendant shall be ineligible for parole.
34 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the
35 court may also impose a fine not to exceed \$500,000.00 or five times
36 the street value of all controlled dangerous substances or controlled
37 substance analogs at any time manufactured or stored at such
38 premises, place or facility, whichever is greater.

39 (cf: P.L.1988, c.44, s.1)

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41 3. N.J.S.2C:35-5 is amended to read as follows:

42 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except as
43 authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be unlawful
44 for any person knowingly or purposely:

45 (1) To manufacture, distribute or dispense, or to possess or have
46 under his control with intent to manufacture, distribute or dispense, a

1 controlled dangerous substance or controlled substance analog; or
2 (2) To create, distribute, or possess or have under his control with
3 intent to distribute, a counterfeit controlled dangerous substance.
4 b. Any person who violates subsection a. with respect to:
5 (1) Heroin, or its analog, or coca leaves and any salt, compound,
6 derivative, or preparation of coca leaves, and any salt, compound,
7 derivative, or preparation thereof which is chemically equivalent or
8 identical with any of these substances, or analogs, except that the
9 substances shall not include decocainized coca leaves or extractions
10 which do not contain cocaine or ecogine, in a quantity of five ounces
11 or more including any adulterants or dilutants is guilty of a crime of
12 the first degree. The defendant shall, except as provided in
13 N.J.S.2C:35-12, be sentenced to a term of imprisonment by the court.
14 The term of imprisonment shall include the imposition of a minimum
15 term which shall be fixed at, or between, one-third and one-half of the
16 sentence imposed, during which the defendant shall be ineligible for
17 parole. Notwithstanding the provisions of subsection a. of
18 N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;
19 (2) A substance referred to in paragraph (1) of this subsection, in
20 a quantity of one-half ounce or more but less than five ounces,
21 including any adulterants or dilutants is guilty of a crime of the second
22 degree;
23 (3) A substance referred to paragraph (1) of this subsection in a
24 quantity less than one-half ounce including any adulterants or dilutants
25 is guilty of a crime of the third degree except that, notwithstanding the
26 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
27 \$50,000.00 may be imposed;
28 (4) A substance classified as a narcotic drug in Schedule I or II
29 other than those specifically covered in this section, or the analog of
30 any such substance, in a quantity of one ounce or more including any
31 adulterants or dilutants is guilty of a crime of the second degree;
32 (5) A substance classified as a narcotic drug in Schedule I or II
33 other than those specifically covered in this section, or the analog of
34 any such substance, in a quantity of less than one ounce including any
35 adulterants or dilutants is guilty of a crime of the third degree except
36 that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3,
37 a fine of up to \$50,000.00 may be imposed;
38 (6) Lysergic acid diethylamide, or its analog, in a quantity of 100
39 milligrams or more including any adulterants or dilutants, or
40 phencyclidine, or its analog, in a quantity of 10 grams or more
41 including any adulterants or dilutants, is guilty of a crime of the first
42 degree. Except as provided in 2C:35-12, the court shall impose a term
43 of imprisonment which shall include the imposition of a minimum term,
44 fixed at, or between, one-third and one-half of the sentence imposed
45 by the court, during which the defendant shall be ineligible for parole.
46 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a

1 fine of up to \$300,000.00 may be imposed;

2 (7) Lysergic acid diethylamide, or its analog, in a quantity of less
3 than 100 milligrams including any adulterants or dilutants, or where
4 the amount is undetermined, or phencyclidine, or its analog, in a
5 quantity of less than 10 grams including any adulterants or dilutants,
6 or where the amount is undetermined, is guilty of a crime of the
7 second degree;

8 (8) Methamphetamine, or its analog, or phenyl-2-propanone (P2P),
9 in a quantity of [one ounce] five ounces or more including any
10 adulterants or dilutants is guilty of a crime of the [second] first degree.
11 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
12 fine of up to \$300,000.00 may be imposed;

13 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
14 (P2P), in a quantity of [less than one ounce] one-half ounce or more
15 but less than five ounces including any adulterants or dilutants is guilty
16 of a crime of the [third] second degree [except that, notwithstanding
17 the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
18 \$50,000.00 may be imposed];

19 (b) Methamphetamine, or its analog, or phenyl-2-propanone
20 (P2P), in a quantity of less than one-half ounce including any
21 adulterants or dilutants is guilty of a crime of the third degree except
22 than notwithstanding the provisions of subsection b. of N.J.S.2C:43-3,
23 a fine of up to \$50,000.00 may be imposed;

24 (10) (a) Marijuana in a quantity of 25 pounds or more including
25 any adulterants or dilutants, or more than 50 marijuana plants,
26 regardless of weight, or hashish in a quantity of five pounds or more
27 including any adulterants or dilutants, is guilty of a crime of the first
28 degree. Notwithstanding the provisions of subsection a. of
29 N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;

30 (b) Marijuana in a quantity of five pounds or more but less than 25
31 pounds including any adulterants [and] or dilutants, or 10 or more but
32 fewer than 50 marijuana plants, regardless of weight, or hashish in a
33 quantity of one pound or more but less than five pounds, including any
34 adulterants and dilutants, is guilty of a crime of the second degree;

35 (11) Marijuana in a quantity of one ounce or more but less than
36 five pounds including any adulterants [and] or dilutants, or hashish in
37 a quantity of five grams or more but less than one pound including any
38 adulterants [and] or dilutants, is guilty of a crime of the third degree
39 except that, notwithstanding the provisions of subsection b. of
40 N.J.S.2C:43-3, a fine of up to \$15,000.00 may be imposed;

41 (12) Marijuana in a quantity of less than one ounce including any
42 adulterants [and] or dilutants, or hashish in a quantity of less than five
43 grams including any adulterants [and] or dilutants, is guilty of a crime
44 of the fourth degree;

45 (13) Any other controlled dangerous substance classified in
46 Schedule I, II, III or IV, or its analog, is guilty of a crime of the third

1 degree, except that, notwithstanding the provisions of subsection b. of
2 N.J.S.2C:43-3, a fine of up to \$15,000.00 may be imposed; or

3 (14) Any Schedule V substance, or its analog, is guilty of a crime
4 of the fourth degree except that, notwithstanding the provisions of
5 subsection b. of N.J.S.2C:43-3, a fine of up to \$15,000.00 may be
6 imposed.

7 c. Where the degree of the offense for violation of this section
8 depends on the quantity of the substance, the quantity involved shall
9 be determined by the trier of fact. Where the indictment or accusation
10 so provides, the quantity involved in individual acts of manufacturing,
11 distribution, dispensing or possessing with intent to distribute may be
12 aggregated in determining the grade of the offense, whether
13 distribution or dispensing is to the same person or several persons,
14 provided that each individual act of manufacturing, distribution,
15 dispensing or possession with intent to distribute was committed
16 within the applicable statute of limitations.

17 (cf: P.L.1988, c.44, s.2)

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19 4. This act shall take effect immediately.

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22 STATEMENT

23

24 This bill would increase the penalties for manufacturing, distributing
25 or dispensing large quantities of marijuana.

26 The bill establishes gradations for marijuana based upon the number
27 of plants possessed (regardless of weight). This gradation scheme,
28 which is similar to the one presently used in federal law, allows law
29 enforcement officials to seize young, growing marijuana plants before
30 they are mature enough to produce large quantities of usable
31 marijuana.

32 The bill adds marijuana to the list of substances which may be used
33 as the basis for a conviction of "maintaining or operating a controlled
34 dangerous substance production facility" under the provisions of
35 N.J.S.A.2C:35-4. Under the bill, a person who maintains or operates
36 any premises for the manufacture of marijuana in an amount greater
37 than five pounds or ten plants would be guilty of a violation of
38 N.J.S.A.2C:35-4, a crime of the first degree. Normally, a crime of the
39 first degree is punishable by a term of imprisonment of up to 10 to 20
40 years, a fine of up to \$100,000, or both. However, a person found
41 guilty of a violation of N.J.S.A.2C:35-4 must be sentenced by the
42 court to a term of imprisonment which includes a mandatory minimum
43 term of between one-third and one-half of the sentence imposed. The
44 person also may be sentenced to pay a fine of up to \$500,000 or five
45 times the street value of all CDS at the facility, whichever is greater.

46 The bill also upgrades the offenses of distribution and possession

1 with intent to distribute methamphetamine ("speed") and marijuana.
2 Currently, this offense is a crime of the second degree, regardless of
3 the quantity involved. By contrast, currently the offenses of
4 distribution and possession with intent to distribute large quantities of
5 heroin and cocaine are both crimes of the first degree. The bill
6 provides that dealers in large quantities of marijuana and
7 methamphetamine would be guilty of first degree crimes as well.

8 The bill also provides that P2P, an immediate precursor used in the
9 manufacture of methamphetamine, would be included in the new
10 gradation scheme.

11 Specifically the bill provides as follows:

12 (1) Distribution or possession with intent to distribute more than
13 five ounces of methamphetamine would be a crime of the first degree.
14 (Currently, committing this offense with any amount of
15 methamphetamine greater than one ounce is a crime of the second
16 degree.)

17 (2) Distribution or possession with intent to distribute one-half
18 ounce to five ounces of methamphetamine would be a crime of the
19 second degree. (Currently, committing this offense with less than one
20 ounce of methamphetamine is a crime of the third degree.)

21 (3) Distribution or possession with intent to distribute 25 pounds
22 of marijuana or 50 marijuana plants, or five pounds of hashish, would
23 be a first degree crime. (Currently, committing this offense with any
24 amount of marijuana greater than five pounds, or any amount of
25 hashish greater than one pound, is a crime of the second degree.)

26 This bill embodies Recommendations #1 and #2 of the Attorney
27 General's "Report to the Governor on the Need to Update the
28 Comprehensive Drug Reform Act of 1987," issued December 9, 1996.

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33 _____
34 Increases penalties for distribution of large quantities of marijuana and
35 methamphetamine; adds marijuana to "Controlled dangerous substance
production facility" statute.